

### **REMARKS**

Claims 12-16 have been amended. Claims 19 and 20 have been added. Claims 17 and 18 have been canceled. Claims 12-16, 19 and 20 are currently pending in this application. Applicants reserve the right to pursue the original and other claims in this and other applications. Applicants respectfully request reconsideration in light of the above amendments and the following remarks.

The previously filed amendment filed August 17, 2010 is objected to as introducing new matter. Reconsideration is respectfully requested. The subject matter indicated by the Office Action as being new matter has been canceled herein. Further, Applicants note that the subject matter of the amended claims included herein is supported in the Specification, among other places, at page 9, lines 21-29. Accordingly, Applicants respectfully request the objection be withdrawn.

Claims 12 and 14 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Claims 12 and 14 have been amended to delete the subject matter indicated by the Office Action as lacking enablement. Accordingly, Applicants respectfully submit that the rejection be withdrawn and the claims allowed.

Claims 12-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dudley et al. (U.S. Patent No. 6,627,887) (“Dudley”) in view of Archie (U.S. Patent No. 6,472,662) (“Archie”). This rejection is respectfully traversed and reconsideration is respectfully requested.

“When a line or space pattern on a sample is measured by a scanning electron microscope, if lines and spaces have similar widths, it could be difficult to distinguish between them and the target location for measurement could be mistaken. Particularly, if the contrast between lines and spaces is low, the problem becomes pronounced.” Specification, pg. 1, line 29 – pg. 2, line 4. The method of the claims makes it possible to measure the size of a desired and appropriate position on a sample without mistaking the portion to be measured. The measurement of the

appropriate position on the sample is made possible due to the fact that the position of an image is adjusted to the appropriate position based on a judgment of line pattern or space, and then the portion of the image to be measured (e.g., “the target location for measurement” in the discussion above) can be measured.

Dudley, on the other hand, does not disclose or suggest “adjusting, based on a judgment result of line pattern or space between adjacent line patterns from the judging step, a position of an image in such a manner that a position of a portion of the image to be measured is brought to a position that has been set for measuring a pattern size” nor “measuring the portion to be measured” after having performed such an adjusting step, as claimed. The Examiner contends that comparing first longer distance LEW2 and shorter distance LEW5 is disclosed in Dudley at col. 3, lines 16-50 (Office Action, pgs. 9-10) and that determining the shape of a structure 126 is disclosed at col. 3, lines 63-67 and col. 4, lines 1-30 (Office Action, pg. 10). However, there is no disclosure regarding performing a concave/convex (space or line) judgment based on the comparison result, nor adjusting the image position based on the concave/convex judgment. Accordingly, all features of the claims are not disclosed in Dudley.

Archie, which is relied upon as disclosing providing waveforms of SEM scans over line and space patterns (Office Action, pg. 10), does not remedy the deficiencies of Dudley discussed above.

Accordingly, Applicants respectfully submit that claims 12 and 14 are allowable over the cited combination. Claim 13 and new claim 19 depend from claim 12 and are allowable along with claim 12. Claims 15, 16 and new claim 20 depend from claim 14 and are allowable along with claim 14. Applicants respectfully request the rejection be withdrawn and the claims allowed.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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